



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,437	12/17/2001	Stephen A. Johnston	UTSD:736US/MBW	2358

7590 09/29/2005

Mark B. Wilsjon  
FULBRIGHT & JAWORSKI L.L.P.  
Suite 2400  
600 Congress Avenue  
Austin, TX 78701

EXAMINER

FORD, VANESSA L

ART UNIT	PAPER NUMBER
----------	--------------

1645

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/023,437

Applicant(s)

JOHNSTON ET AL.

Examiner

Vanessa L. Ford

Art Unit

1645

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 31 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see the Advisory attachment. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: NONE.  
Claim(s) objected to: NONE.  
Claim(s) rejected: 25,39,41-45,74 and 83.  
Claim(s) withdrawn from consideration: 26-27, 29-38, 50-61, and 76-81.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see Advisory attachment.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

*JND*

Art Unit: 1645

***Advisory Action Attachment***

1. Applicants amendment and response filed August 31, 2005 is acknowledged.
2. Applicants amendment is not entered because the claims as amended would require further consideration and require new searches. The scope of the claimed invention has been changed. For example, claim 74 has been amended to limit its scope of the *Chlamydia psittaci* antigen to "having the sequence of SEQ ID NO:9". Before, the submission of the after-final amendment the scope of claim 74 required that the *Chlamydia psittaci* antigen "have the sequence of SEQ ID NO:9 or antigenic fragment thereof comprising at least 25 contiguous residues of SEQ ID NO:9". Claim 83 would involve a similar situation. The amendments made to the claims in the amendment filed August 31, 2005 has not been searched or considered before the submission of the After Final Amendment.

***Rejections Maintained***

3. The following rejections are maintained because Applicant arguments are directed to the newly submitted claims.
  - a. The rejection under 35 U.S.C. 112, first paragraph is maintained for claims 25, 39-45, 74-75, 82-91 for the reasons set forth on pages 2-7, paragraph 4 of the Final Office Action.
  - b. The rejection under 35 U.S.C. 112, second paragraph is maintained for claims 25, 39-45, 74-75, 82-84 for the reasons set forth on page 7, paragraph 5 of the Final Office Action.

Art Unit: 1645

c. The rejection under 35 U.S.C. 102(e), is maintained for claims 25, 39, 41, 43, 45 and 82-83 for the reasons set forth on pages 8-9, paragraph 6 of the Final Office Action.

d. The rejection under 35 U.S.C. 102(b), is maintained for claims 25, 39, 41, 43, 45 and 82-83 for the reasons set forth on pages 10-11, paragraph 7 of the Final Office Action.

e. Objection to claim 86 is maintained for the reasons set forth on page 12, paragraph 8 of the Final Office Action.

f. The rejection under 35 U.S.C. 112, first paragraph is maintained for claims 40, 42, 74-75 and 85-91 for the reasons set forth on pages 12-13, paragraph 9 of the Final Office Action.

g. The rejection under 35 U.S.C. 112, second paragraph is maintained for claims 39-45, 74-75 and 82-84 for the reasons set forth on page 13, paragraph 10 of the Final Office Action.

#### **Status of Claims**

4. No claims are allowed.

Art Unit: 1645

**Conclusion**

5. Any inquiry of the general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Office Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for the Group 1600 is (703) 872-9306.

Any inquiry concerning this communication from the examiner should be directed to Vanessa L. Ford, whose telephone number is (571) 272-0857. The examiner can normally be reached on Monday – Friday from 9:00 AM to 6:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached at (571) 272-0864.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*VA*  
Vanessa L. Ford  
Biotechnology Patent Examiner  
September 4, 2005

*Nita Minnifield*  
NITA MINNIFIELD  
PRIMARY EXAMINER  
9/7/05